

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BRAUN GmbH,

Plaintiff,

v.

RAYOVAC CORPORATION,

Defendant.

Civil Action No. 03-CV-12428-WGY

**DECLARATION OF SAMIR NAYFEH IN SUPPORT OF BRAUN GmbH'S
MOTION FOR PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT**

1. I am an Assistant Professor of Mechanical Engineering at the Massachusetts Institute of Technology in Cambridge, Massachusetts. A copy of my curriculum vitae is attached to this Report at Attachment A.
2. I was retained by Braun GmbH ("Braun") to examine cleaning devices for electric shavers, which I understand to be sold by Rayovac Corporation ("Rayovac"), and to opine, among other things, as to whether these devices infringe two patents -- U.S. Patent No. 5,711,328 (the "'328 Patent"), which I understand to be owned by Braun.
3. In order to arrive at my opinion, I have reviewed the '328 Patent and its prosecution history.
4. In addition, I have examined three Remington products -- two "Titanium Smart System" electric shaving systems: a men's rotary system with product designation R-9500 (the "R-9500 cleaning system") and a men's foil system with product designation

MS-5500 (the “MS-5500 cleaning system”);¹ and one “Smooth & Silky Titanium System”, which is a women’s foil system with product designation WDF-7000CS (the “WDF-7000CS cleaning system”). Each of these Rayovac products includes an electric shaver and a cleaning system.

5. I have also reviewed the parties’ Markman briefs, and accompanying exhibits, which I understand to have been submitted with the Court in this matter. Finally, I have reviewed the transcript from the March 15, 2005 Markman hearing.

6. In my opinion, each of the three Rayovac cleaning systems, which I have examined, infringes claim 11 of the ’328 Patent. As discussed in more detail below, each of the claim elements of that claim is found in each of the three Rayovac cleaning systems.

COMPARISON OF CLAIM 11 AND RAYOVAC PRODUCTS

7. In the following chart, I compare claim 11 of the ’328 Patent to the Rayovac cleaning systems. Each of the three Rayovac cleaning systems, which I have examined, operates in substantially the same manner. In each, an electric shaver is inserted into a housing to be cleaned, dried, charged, and stored. During the cleaning operation, cleaning fluid is fed from a container to a structure that supports or receives the shaving head of the electric shaver.

¹ I understand that Rayovac sells another men’s foil shaver cleaning system with product designation MS-5700. I further understand that this MS-5700 cleaning system differs from the MS-5500 cleaning system only with respect to certain details of the electric shaver, which do not affect the cleaning operation and that the MS-5700 cleaning system is identical in all material respects to the MS-5500 cleaning system. Therefore, my opinion with regard to the MS-5700 cleaning system is the same as my opinion with regard to the MS-5500 cleaning system.

8. In the photographs of these cleaning systems attached to the Declaration of Dalila Argaez Wendlandt In Support of Braun GmbH's Motion For Partial Summary Judgment Of Infringement, at Exhibits B through D, corresponding components of the R-9500, MS-5500, and WDF-7000CS cleaning systems are given the same numbers, and the descriptions and analysis in the following apply equally to each of the three systems unless noted. Exhibit B to Ms. Wendlandt's declaration consists of Figures 1a-1d, which are photographs of the R-9500 cleaning system; Exhibit C consists of Figures 2a-2c, which are photographs of the MS-5500 cleaning system; Exhibit D consists of Figures 3a-3c, which are photographs of the WDF-7000CS cleaning system.

9. Claim 11 of the '328 Patent

Claim 11 Of The '328 Patent	The Court's Construction	The Remington Cleaning System
A cleaning device comprising:		Each Rayovac cleaning system includes an electric shaver 1 and a cleaning device contained in a housing 2 and including a container 5, as shown in Figures 1a, 2a, and 3a. The electric shaver 1 is inserted into the housing 2 to be cleaned, dried, charged, and stored.
a cradle structure adapted to receive a shaving head of a shaving apparatus,	a structure adapted to support or receive a shaving head of a shaving apparatus and able to receive or retain fluid or both	Referring to Figures 1a, 2a-c, and 3a-c, the cleaning device of each system includes manifold 3a with ports 3b and supporting structures 3c. ² When the shaving head 4 of the shaver 1 is inserted into the cleaning system, it bears against the ports 3b and the surfaces of supporting structures 3c, and is thereby supported in place. The

² Only a subset of the ports 3b and supporting structures 3c are labeled in each photograph. The R-9500 cleaning system has three ports 3b and several protruding supporting structures 3c. The MS-5500 cleaning system has four ports 3b and several supporting structures 3c on a spring-supported structure. The WDF-7000CS cleaning system has two ports 3b and several supporting structures 3c on a spring-supported structure.

Claim 11 Of The '328 Patent	The Court's Construction	The Remington Cleaning System
		manifold 3a, ports 3b, and supporting structures 3c together constitute the cradle structure.
a cleaning fluid container,	a container for holding cleaning fluid	Referring to Figures 1b, 2b, and 3b, a container 5 holds cleaning fluid.
a feed device for feeding cleaning fluid to said cradle structure,	a mechanism that feeds cleaning fluid from the cleaning fluid container to the cradle structure	Referring to Figures 1c, 2c, and 3c, a pump 6 and conduit 7 feed fluid to the manifold 3a and ports 3b of the cradle structure during the cleaning operation.
said cradle structure being arranged above a fluid level of the cleaning fluid in said cleaning fluid container during the feeding of said cleaning fluid to said cradle structure, and	During the feeding of said cleaning fluid to said cradle structure, the cradle structure is above the fluid level of the fluid in the fluid container.	The cradle structure 3a, 3b, and 3c is located above the cleaning fluid level in the container 5 during the feeding of cleaning fluid to the cradle structure.
a drying device.	a drying device.	Referring to Figures 1c, 2c, and 3c, the cleaning device of each system includes a rotor 8 in an impeller casing 9 configured to blow air through an opening in the impeller casing 9 to the shaving head 4. This airflow serves to dry the shaving head 4.

10. In his second report, Mr. Phillips argues that it is only the exterior surfaces of the ports 3b and the supporting structures 3c that support the shaver, and that these surfaces do not receive or retain cleaning fluid. See Phillips 2nd Report at ¶¶33, 66. Mr. Phillips' observation is not sound. It is clear to one of ordinary skill in the art that a "structure adapted to support or receive a shaving head" includes not only the "surfaces" of that structure that make direct contact with the shaving head, but also the entire structure that supports the shaving head. In this particular case, the ports 3b are integrally formed with the manifold 3a. Together with supporting structures 3c, these features all support the

shaver head. Therefore, one of ordinary skill in the art would recognize that the manifold 3a, injection ports 3b, and supporting structures 3c together constitute “a structure adapted to support or receive a shaving head of a shaving apparatus.” Moreover, during the cleaning operation, the feed device of each of the Rayovac cleaning systems feeds cleaning fluid to the manifold 3a and thereby to the ports 3b. Thus, the “structure adapted to support or receive a shaving head” is also “able to receive or retain fluid or both.”

11. In my opinion, therefore, the three Rayovac cleaning systems infringe claim 11 of the '328 Patent.

Signed under the pains and penalties of perjury this 22d day of August, 2005.

/s/ Samir Nayfeh
Samir Nayfeh